

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ANTHONY KINARD,

Plaintiff,

v.

Case No. 04-70542

LARRY NUNNERY, et al.,

HONORABLE AVERN COHN

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**  
**AND**  
**DENYING DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO PROSECUTE**

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff claims that defendants have interfered with his legal mail. The case has been referred to a magistrate judge for pre-trial proceedings. Defendants Wolfenburger, Scott, Cook, Redmond, Walsh, Hovey, and Kennedy filed a motion to dismiss for lack of prosecution under Fed. R. Civ. P. 41(b) based primarily on the difficulties plaintiff's appointed counsel is having with plaintiff. The magistrate judge issued a report and recommendation (MJRR) recommending that the motion be denied. Defendants object.

The Court agrees with the magistrate judge that dismissal for lack of prosecution is not warranted at this time. However, plaintiff is on notice that lack of cooperation and communication with appointed counsel may result in dismissal of his case.

Accordingly, the MJRR is ADOPTED. Defendants' motion is DENIED. The case continues before the magistrate judge.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: December 4, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, December 4, 2006, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160